

FIRST 2015 PRESIDENTIAL CAMPAIGN FINANCE AND USE OF STATE ADMINISTRATIVE RESOURCES REPORT

BY

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1. INTRODUCTION

This report focuses on the campaign finance spending and use of state administrative resources of the frontline political parties viz, the Peoples Democratic Party (PDP) and All Progressive Congress (APC) and their presidential candidates. It also focuses on interventions by the Independent National Electoral Commission (INEC or Commission) during the period leading to the notice of poll for the 2015 elections and during the campaigns.

2. INEC'S NEW REGULATIONS

The Electoral Act 2010 (as amended) despite providing expenditure ceilings for candidates did not mandate candidates to report to INEC on their expenditure. However, INEC has taken steps to provide reporting obligations for candidates. Relying on S.153 of the Act¹, INEC has made provisions in the Guidelines and Regulations for Political Parties 2013. The Guidelines state as follows.

a. Candidates, Campaign Office, Fundraising by Candidates and Disclosure

S. 11. All candidates shall:

a) Submit detailed address of their campaign offices to the Commission within 7 days from the date of publication of the notice of election.

(b) Notify the Commission of all events or meetings for the purpose of raising funds towards their campaign at least 7 days before such events or meeting.

b. Disclosure

12. All candidates shall disclose to the Commission records of all contributions and other sources of funds for their campaign, as well as records of expenditure in a prescribed format issued by the Commission.

¹ Section 153 of the Act states that: "*The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration thereof*"

c. Books of Accounts

13. Every candidate shall:

(a) *Maintain a record of all contributions as well as any other source(s) of funds. The records shall include the names, addresses, occupation of the donor(s) and amount donated.*

(b) *Maintain proper books of account and records of all expenses incurred during campaign.*

d. Anonymous Contribution(s)

14. *No candidate shall accept or keep in his/her possession any money anonymously donated or other contributions, gifts or property from any source whatsoever.*

e. Audited Return

15. (1) All candidates shall:

(a) *Submit detailed audited returns of their campaign expenses to the Commission within six (6) months after an election.*

(b) *Such returns shall indicate details of donations, other sources of funding, expenditure on goods, services and sundry expenses incurred for the purpose of election.*

(2). *The audited return on campaign expenses shall be signed by the candidate and supported by an affidavit sworn by the candidate as to the correctness of its content.*

16. *The Commission shall examine the records and audited account, of candidates on their campaign expenses through any officer or body authorized by the Commission in writing.*

The foregoing Guidelines provide a clear procedure for candidates to document and report on all contributions and expenses regarding the campaigns to the Commission. Candidates are under obligation to notify INEC of their fundraising activities at least 7 days before the event; keep proper books of account detailing receipts and expenditure; decline anonymous contributions; audit the campaign expenses and submit the audited accounts to INEC accompanied by a verifying affidavit vouching its correctness on oath. Thus, any statements in the audited accounts which are incorrect introduce the legal dimension of lying on oath. The only thing remaining to ensure that the candidates comply with these rules is the political will to enforce same. The trend of events after the 2015 elections will show whether INEC will be ready and willing to enforce the Guidelines.

3. PURCHASE OF FORMS AND EXPRESSION OF INTEREST TO CONTEST

The APC and PDP respectively fixed very high and outrageous sums of money as the price for presidential nomination form and expression of interest to contest. For the APC, the presidential expression of interest and nomination form totalled N27.5m. For the PDP, the sum of N22m (N20m for the form and N2m for expression of interest) was required for the same purpose. While some presidential aspirants in the APC like Abubakar Atiku and Governor Kwakwanso found it easy to pay these fees, General Buhari found it difficult to raise the money and had to raise a loan from his bank to be able to buy the form and express his interest to contest. General Buhari was reported to have stated that “If I were not part of the constitutional body of the party and the fact that I am part of those that formed this party, I would have complained about the amount that we have to pay”. But this raises several posers including whether it is legal and legitimate for a bank to lend money to a customer to buy a mere form for the purpose of contesting for public office and the kind of collateral offered for this credit facility. If an aspirant borrows to finance his aspiration, how will he fund his candidature in the event he emerges (or now that he has emerged)?

On the other hand, several interest groups donated N102 million to pay for the form and expression of interest for the unchallenged presidential candidate of the PDP. Although the Electoral Act did not provide for limits on expenditure on nomination forms and expression of interest to contest, the sums fixed by the parties obviously starts the monetization process of the electoral contest.

4. AND TRANSFORMATION AMBASSADORS OF NIGERIA (TAN) BEAT THE GUN

Before INEC announced the notice of poll, TAN had begun rallies across the federation in support of the incumbent President Goodluck Jonathan. Huge resources were invested in the rallies and media blitz across the print and electronic media. Reminiscent of the “Youths Earnestly Ask for Abacha” saga, TAN staged rallies at the state and zonal levels. However, this ran contrary to the Nigerian Constitution which in section 221 states unequivocally that:

No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

The presence of high level public officers at the rallies raised suspicion about whether the rallies were actually privately funded or funded with public resources. TAN violated the Constitution of the Federal Republic of Nigeria 1999 with impunity. A notable member of TAN was Ifeanyi Uba, the former managing director of Capital Oil Ltd – a

company indicted in the N65billion Assets Management Corporation of Nigeria/oil subsidy saga proceedings.

During the official declaration of President Jonathan for his 2015 candidature, TAN officials were held hostage for the failure to honour commitments to rented crowds. Some of the protesters were demanding to be paid N40,000 as against the N5000 which was being disbursed to them². This raises a straightforward poser; why rent a crowd when Nigerians should feel free to attend an event of such nature on their own free volition?

5. THE APC CONVENTION AND THE INFLUENCE OF MONEY

A major newspaper reported as follows about expenditures by presidential aspirants on the platform of the APC at their convention³.

“For three days last week, the city of Lagos played host to over 8,000 delegates of the All Progressives Congress (APC). The delegates had converged on the city to pick a presidential candidate out of the five APC members that showed interest for the top job. Prior to the Tuesday December 9, date when the delegates are expected in town, nearly all the major hotels in the state had been booked. In fact, it was a rat race between Atiku campaign team and those of General Buhari as major hotels were booked far ahead of the convention. While the Atiku group works towards securing 3,500 rooms for its delegates, the Buhari group were aiming at getting 4,000 rooms. Other aspirants also joined the race to provide accommodation for their delegates and team and the boom saw many hoteliers smiling to the banks.

Though, there wasn't an increase in hotel accommodations, but the influx of people into the state, led to a situation where most hotels were fully booked and had to turn customers back. While the major hotels were for delegates, the smaller ones were also not left out as some of the delegates provided accommodations for their aides such as drivers and security personnel there.

The race to provide accommodation to delegates by the aspirants, however, is not just for the fun of it but to ensure that those delegates cast their ballot for them at the end of the day. Aside from the hotel accommodation, some of the aspirants also provided logistic support for most of the delegates. The logistics could be in the form of Naira notes or the preferred currency-dollar. Most of the delegates were sought after by many of the aspirants and it was not surprising when some of the delegates said they made over \$5,000 each for the three days spent in Lagos. While it was alleged that the Atiku group gave \$2,000 to each of the delegates, a governor from one of the states in the south ensured that each of the delegates got \$3,000 on behalf of Buhari”.

² See THISDAY newspaper of November 12th 2014

³ Kazeem Akintunde writing in THISDAY Newspaper of December 16 2014; this was also corroborated by another report in PUNCH Newspaper of December 13 2014 titled *PDP, APC primaries: dollar, naira rain for delegates*.

If this report reflects what actually transpired at the APC primaries, then money and other resources played a key role in the determination of the outcome of that primary. This is clearly against the spirit of fair play and issue based politics. The amazing aspect of this development is that the respective campaign organisations did not make any efforts to deny these allegations made against their principals.

6. THE PDP FUNDRAISER ON DECEMBER 2014

The Peoples Democratic Party held a Fund Raising Dinner at the Old Banquet Hall of the Presidential Villa, Abuja in late December 2014. The sum of N21.27bn was raised to support the campaign of President Goodluck Jonathan for a second term in office. A lot of issues and controversies have been raised since the fundraising especially those bordering on the legal and ethical challenges arising from the event. This discourse intends to analyse the implications of the fundraising from the point of view of campaign finance laws binding and accepted under Nigerian jurisprudence and to urge for action from the relevant authorities.

By S.153 of the Constitution, the INEC is inter alia authorized to monitor the organisation and operation of political parties including their finances and to carry out such other functions as may be conferred on it by an Act of the National Assembly. By S.153 of the Electoral Act, INEC has powers to make rules and regulations for the full implementation of the Electoral Act 2010 (as amended). Pursuant to the above powers, INEC enacted the Guidelines and Regulations for Political Parties 2013. By S.11 (b), the Guidelines require all candidates to notify INEC of all events for the purpose of raising funds towards their campaign at least 7 days before the event. From available information, no notice was given to INEC and there was no INEC representative at the event.

It was reported that the PDP Governors Forum announced a total donation of N1.05billion and the Bauchi State Governor, Isa Yuguda, who spoke on behalf of the PDP governors, said each 21 of them would donate N50m each. This donation by the governors violated S.100 (2) of the Electoral Act which clearly stipulates that state apparatus shall not be employed to the advantage or disadvantage of any political party or candidate at an election. Coming at a time, most states of the federation were finding it difficult to pay workers salaries, this is an insensitive donation. It was an illegal donation which also discriminated against other candidates and political parties against the letter and spirit of the constitutional fundamental rights non discrimination clause. In the so called PDP states, there are so many citizens supporting the candidates of other political parties and these candidates are entitled to state support in the event the state decides to support political parties. The only way to right the wrong of the donation is for the PDP governors to donate N50m each to the campaign of all the presidential candidates contesting the 2015 presidential election. Pray, did any of the state budgets

have legislative approval for this expenditure head? What could have been the justification of this expenditure in the budget if it had been approved?

The 15 states on the board of the Niger Delta Development Commission were reported to have donated a total of N15million, among other donations. Did this money come from the state governments or the NDDC? Definitely, it could not have come from state governments considering that states like Rivers and Imo which are not controlled by the PDP are part of the NDDC states. Thus, this is public money coming from the coffers of a public agency - the NDDC and now being “donated” for the Jonathan campaign. This is not only outrageous but a crime that should not be swept under the carpet.

The fundraiser had “Players” in the Oil and Gas sector announcing a donation of N5bn; those in Real Estate and Building donated N4bn; Transport and Aviation, N1bn; Food and Agriculture, N500m; Power, N500m; Construction, N310m; Road Construction, N250m. Who are these undisclosed players in these sectors? Are they afraid of coming out publicly to identify themselves? Only the guilty are afraid. These anonymous donations are in violation of S.93 (1) of the Electoral Act which clearly states that no political party shall accept or keep in its possession any anonymous monetary or other contributions, gifts, properties, etc from any source whatsoever. S.14 of the 2013 Guidelines aforementioned also bars candidates from accepting or keeping anonymous donations, gifts or properties from any source whatsoever. So whether it is PDP or Jonathan the candidate, the Electoral Act has been violated.

For Shelter Development Ltd and the SIFAX group who donated N250m and N100m respectively, the Companies and Allied Matters Act was violated. S. 38 (2) of the Companies and Allied Matters Act (CAMA) prohibits corporate bodies from making contributions to political parties. The section specifically provides as follows:

“A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose; and if any company, in breach of this subsection makes any donation or gift of its property to a political party, or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift”.

The chairman of the occasion, Tunde Ayeni, who set the ball rolling, was reported to have donated N2bn. He said the sum consisted of N1bn donated by him and his partner, and another N1bn contributed by his unnamed friends. These unnamed friends are another set of anonymous donors. No one begrudges another person who has made so much money as to the purpose to which he deploys his money. But Nigerians

will like to know from this generous donor how much he has paid in personal income tax in the last couple of years. How much have his generous friends also paid in income tax?

7. BUHARI'S FUNDRAISING EFFORTS

Even before his emergence as a candidate of the APC, Gen. Buhari had sought to raise funds from the populace. In his Facebook Account, he stated⁴:

"As we have made it clear, our campaign is going to be funded, planned and run by ordinary Nigerian citizens like you. This is in recognition of your role as biggest stakeholders capable of changing the course of history of this great yet badly run nation. In this regard, we launch our crowd funding platform through which every Nigerian can contribute his token towards shaping the destiny of this country. Here are the details:

Account Name: Buhari Support Organizations. Account Number: 2026724405

Bank: First Bank Nigeria. Sort Code: 011150000

Dear friends, I know what it means to ask citizens over 60 per cent of whom live on less than \$1 per day to donate for this campaign. I know many of you are finding it difficult to pay your rents, school and medical bills, to buy the fuel to cook your food, light up your homes or power your vehicles. I know how it hurts and I know you have suffered enough.

But that little contribution – that little sacrifice you make is an investment in the future that come 2015 will usher in a new era for our country, one that promises jobs and opportunities for anyone willing to work hard, and peace and prosperity for all.

So when you look at that little amount of money you are parting with, and the money our opponents are offering you for your votes, think not about the nominal value, think about the choice you are making, and that choice is very clear; either you put your money for a change you trust in, or for four more years of insecurity, corruption and bad leadership under President Jonathan.

Our opponents have huge financial resources, I have only you and God, and I trust that our struggle will triumph. Our opponents have foreign bank accounts and possessions to run to when they destroy this country, me and you have only this Nigeria to live and die in. So let's join our hands to make it better.

"Thank you and God bless.

⁴ See the Vanguard Newspaper; November 26, 2014, by Emmanuel Aziken, Political Editor

On December 23 2014, while rendering an account of the funds so far donated by his supporters, he revealed a total donation of N54million. As at 7th of January 2014, the sum has grown to N118.7m. It was also reported on December 31 2014 that yam farmers from some states in Northern Nigeria are to raise the sum of N5billion through a contribution of 5million tubers of yam to be sold at N1000 each⁵. The attempt by Buhari to source funds from the grassroots and the populace is a welcome development that commits small donors rather than the reliance on big and corporate donors who may eventually demand a pound of flesh after the elections. However, INEC, EFCC and other agencies have a duty to ensure that the public appeal for donations do not become an avenue for laundering of corrupt or illegally obtained money.

8. ABUSE OF STATE RESOURCES

a. Regulatory Resources: A chartered aircraft conveying a presidential aspirant of the APC, Gen. Mohammadu Buhari (rtd) and his entourage was allegedly denied landing rights by the authorities of the Federal Airports Authority of Nigeria (FAAN), in Makurdi, the Benue State capital. General Buhari and his entourage were travelling from Bayelsa State to Makurdi to woo delegates of his party ahead of the APC delegates congress scheduled for December but had their flight denied permission to touch down in Makurdi. Media reports indicate that the flight was earlier granted landing permission but half an hour to his arrival, a counter directive was issued mid-flight thereby forcing the aircraft to head to Abuja. The Buhari team stated as follows: *“What they did was evil and dangerous, what if the plane was low on fuel, what do think would have happened? Desperation has set-in in our politics and it is posing grave danger to our democracy.”*⁶ The central question in this scenario would be the propriety of the reason for denying landing rights after granting same earlier.

b. Public Officers Working for Partisan Purposes: Some serving public officers have been in the campaign team of both President Jonathan and General Buhari. The first is the Rivers State Governor Rotimi Amaechi who heads General Buhari’s Campaign Team and the second is Okonjo Iweala, the Minister of Finance working on President Jonathan’s Campaign Team. As a governor working full time for the people of Rivers State, he should be dedicated 24 hours a day, 7 days a week to his duties rather than the distraction of partisan campaigns. It would have been understandable if he was campaigning for his own re-election; and APC has enough materials who are not serving public officers to anchor the Buhari campaign. For the Minister of Finance and Coordinating Minister of the Economy, it is a grave distraction at this period of economic

⁵ See the Nation newspaper of December 31 2014 at page 6.

⁶ “Buhari’s aircraft denied landing at Makurdi Airport”- See Vanguard Newspaper of November 27, 2014; report by Peter Duru.

decline for her attention to be shifted away from the economic and fiscal policies of government into sheer partisanship. It is therefore recommended that these public officers return to their normal beat rather than diverting attention away to partisanship.

c. Public Resources or the Sudden Charitable Disposition of Patience Jonathan?:

There are reports that the First Lady, Patience Jonathan has commenced the distribution of 8,400 bags of fertiliser branded with the picture of President Jonathan to women farmers in Sokoto State. The distribution is reported as collaboration between the Offices of the First Lady, the Millennium Development Goals and would be channeled through the Ministry of Agriculture⁷. In essence, this arrangement suggests that the fertilizers were procured with public resources. With the branding, it is obvious fertilizers procured with public resources are being portrayed as the private gift of the First Lady or the President to the farmers. This runs contrary to PDP's obligations under the Code of Conduct for Political Parties 2013 to discourage their members in government from using the power of incumbency to the disadvantage of other parties or their candidates during campaigns⁸.

Assuming without conceding that the fertilizers were acquired with private resources, this "gift" is evidently linked to the 2015 presidential election. Coming at this point in time, it smells of an inducement to voters to embrace the candidate whose picture brands the fertilizer and this is contrary to the whole gamut of section 124 of the Electoral Act 2010 (amended).

9. ELECTION SPENDING AND MACROECONOMIC STABILITY

The Central Bank of Nigeria Communiqué No. 98 of the Monetary Policy Committee Meeting of Monday 24th and Tuesday 25th November, 2014 recognized the upside risks to inflation in the near-term to include increased spending in the build up to the 2015 general elections. According to a member of the MPC, Balami Dahiru Hassan, the pressure on the Naira was recognized to be partly due to Dollar demands from politicians holding their asset in hard currency ahead of election next year. The reported instance of the spending in dollars at the APC primaries is a case in point. The challenge of excess liquidity heading into the elections was also raised as a concern. Headline Inflation dropped steadily from 8.5% in August to 8.1% in October; though this trend is expected to reverse in the near term and trend northwards due to upside risks associated with increased spending in the build-up to the upcoming general elections in 2015⁹.

⁷ THISDAY Newspaper of January 6 2014 at page 12.

⁸ See page 7 of the Code of Conduct for Political Parties 2013.

⁹ The submission of Lawson Stanley, a member of the MPC.

10. CONCLUSIONS AND THE WAY FORWARD

- ❖ Candidates and Political Parties should take notice and implement INEC's new Campaign Finance Guidelines and INEC should seek to enforce the provisions to the letter.
- ❖ The National Assembly should consider fixing limits in future amendments to the Electoral Act on the amount to be spent for the expression of interest and purchase of nomination forms.
- ❖ Considering that the 1999 Constitution, extant laws and Guidelines were violated by the PDP fundraiser, the following recommendations are pertinent. INEC should publicly send a query to PDP to explain why it flouted the 2013 Guidelines and make their reply public. Also, relevant administrative sanctions should be applied to the PDP. If there are no sanctions in the Guidelines, INEC should provide for them for future use. INEC should also demand that all anonymous donations at the fund raiser be paid over to it. Other presidential candidates supported by indigenes of these states who are card carrying members of the political parties should demand their own N50m from the donor states and where the PDP governors fail to make same available, they should institute action in court to compel the governors to do so and let us see what the courts will rule on it. If the companies that donated to the president's campaign are public companies, their shareholders should bring action for the return of the donated sums of money and invoke the penal sanctions of the law. If they are private companies, we expect the Corporate Affairs Commission, INEC, NGOs and the Nigerian Bar Association to use the courts to seek the enforcement of S.38 of CAMA.
- ❖ INEC, EFCC, CBN and the money laundering agencies should monitor the fund raising activities of candidates to ensure that it does not provide a cover for money laundering or the injection of illegally acquired money into the system.
- ❖ INEC should proactively remind political parties and candidates of the campaign finance rules and the rules governing the deployment of state administrative resources.
- ❖ State resources including regulatory, media and financial resources should not be deployed to promote the candidature of any person or to the disadvantage of any presidential candidate. All candidates should be treated equally and fairly by state agencies. Public resources should not be branded for private political gain.

- ❖ Public officers should stick to their official beats and refrain from using the time paid at public expense for private political purpose.
- ❖ Civil society should take a more active and less partisan interest in campaign finance monitoring and the use of state administrative resources.